

**UNITED STATES OF AMERICA** )  
)  
**vs.** )  
)  
**WENDELL ANTHONY JACKSON,** )  
)  
**Defendant.** )  
)

Under 18 U.S.C. § 3582(c)(2), a court may modify an imposed term of imprisonment where the defendant has “been sentenced to a term of imprisonment based on a sentencing range

that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o) . . . [and] after considering the factors set forth in section 3553(a) . . . if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” Section 3582(c)(2) is only applicable to instances where a defendant is sentenced and a provision in the Sentencing Guidelines is subsequently amended, which, had the amendment occurred prior to the defendant’s sentencing, would have resulted in a lower term of imprisonment. In such an instance, the court has the discretion to amend the defendant’s term of imprisonment, but only after also considering the factors listed in § 3553(a) and the policy statements issued by the Sentencing Commission. This is not the situation now before this Court.

Defendant argues that Amendment 591 to the Sentencing Guidelines allows a reduction in his sentence. Defendant correctly states in his Motion that Amendment 591 requires the sentencing court to look to the statute of conviction to enhance a sentence for a drug offense near a protected location, rather than to enhance for conforming conduct. (Def.’s Mot. at 6.) Therefore, in order for the enhanced penalties for a drug offense near a protected area to apply, Defendant must have been convicted of such an offense, rather than just simply to have engaged in such conduct. *See United States v. Whitaker*, 2005 WL 3240662, \*3 (D.S.C. 2005).

However, a review of the record reveals that Defendant did plead guilty to conspiracy to possess with intent to distribute, and distribute, a quantity of cocaine and cocaine base within 1,000 feet of a protected area, in violation of 21 U.S.C. §§ 841(a)(1), 846, and 860. Moreover, Defendant concedes that Count One of the Indictment, to which he pled guilty, included a violation of 21 U.S.C. § 860. (Def.’s Mot. at 4.) Thus, it was entirely proper for his sentence to be enhanced based on the conviction of a drug offense near a protected location. For these

reason, Defendant's sentence comports with Amendment 591.

**IT IS, THEREFORE, ORDERED** that the Defendant's "Motion for Reduction of Sentence Pursuant to Title 18 U.S.C. 3582(c)(2) and USSG § 1B1.10(c)," (file doc. 610), is hereby **DENIED**.

Signed: April 11, 2006

A handwritten signature in black ink, reading "Richard L. Voorhees", written over a horizontal line.

Richard L. Voorhees  
Chief United States District Judge

